

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

STATE OF TEXAS, *et al.*,

*Plaintiffs,*

v.

UNITED STATES DEPARTMENT OF  
HOMELAND SECURITY, *et al.*,

*Defendants.*

CASE No. 6:24-CV-306-JCB

**NOTICE**

Plaintiffs should not be required to file a response to the Proposed Intervenor’s frivolous attempt, ECF No. 84, to evade the Fifth Circuit’s unanimous affirmance of this Court’s denial of intervention, which is now law of the case. Opinion and Order Affirming Denial of Intervention, No. 24-40571 (5th Cir. Oct. 4, 2024), ECF No. 111. Proposed Intervenor has neither sought panel reconsideration nor petitioned for en banc review.

During the meet-and-confer, counsel for Proposed Intervenor maintained that there was a changed circumstance from their prior intervention motion—namely that there is now evidence of adversity of interest with Federal Defendants. This supposed “adversity” is based on the Federal Defendants’ opposition to their attempt to seek mandamus and an emergency stay of this Court’s extension of the administrative stay of the agency action. Federal Defendants—while expressing agreement with Proposed Intervenor that this Court’s administrative stay was erroneous— stated that they had “decided to defend the lawfulness of the [agency action] through the expedited merits schedule entered by the district court rather than by seeking emergency relief from [the Fifth Circuit], and nonparties like [Proposed Intervenor] cannot properly circumvent that considered judgment.” DOJ Resp. to Petitioners’ Motion for Stay, No. 24-40671 (5th Cir. Oct. 15, 2024), ECF No. 43 at 4. But a “[d]ifference[] of opinion regarding an existing party’s

litigation strategy or tactics used in pursuit thereof, without more, do[es] not rise to adversity of interest.” *Guenther v. BP Ret. Accumulation Plan*, 50 F.4th 536, 543 (5th Cir. 2022) (per curiam).

More fundamentally, the determination of whether the Proposed Intervenor should be allowed to intervene in this case remains within the Court of Appeals until the issuance of the mandate on November 26, 2024. No. 24-40571 (5th Cir. Oct. 4, 2024), ECF Nos. 111, 112. Until that time, this Court has no jurisdiction over that issue at all.

Finally, Proposed Intervenor has missed this Court’s deadline to file any trial motions or motion for summary judgment. *See* ECF No. 69 (setting October 18, 2024, deadline). So even without all the problems identified above, intervention would not be timely—and, because of that passed deadline, Proposed Intervenor could have no relevant participation at the hearing and bench trial scheduled for November 5, 2024, even if intervention were granted. Any attempt to intervene at this point is frivolous and potentially sanctionable.

Dated: October 22, 2024

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 22, 2024, I electronically filed this notice with the Clerk of the Court for the United States District Court for the Eastern District of Texas by using the CM/ECF system. Counsel in the case are registered CM/ECF users and service will be accomplished by the CM/ECF system.

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